



# THE INTERIM

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## THE INTERIM

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**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

## LEGISLATIVE FINANCE COMMITTEE

October meeting... The Legislative Finance Committee will meet Thursday and Friday, Oct. 9-10. The performance measurement work groups will meet with various agencies Thursday at 8 a.m. to discuss performance measures and outcomes related to agreed upon agency goals and objectives. Check the meeting agenda for the room numbers for these meetings. The full LFC will meet Thursday at 1 p.m. in Room 102 of the state Capitol and continue at 8 a.m. Friday. The agenda and various reports for this meeting are available on the Legislative Fiscal Division website at [www.leg.mt.gov/lfc](http://www.leg.mt.gov/lfc), or contact Clayton Schenck for more information at [cschenck@mt.gov](mailto:cschenck@mt.gov) or any LFD staff at (406) 444-2986.

The agenda for the meeting includes:

- The 2009 biennium general fund status report
- The "Big Picture Report", which is a preliminary projection of the general fund balance for the 2011 biennium at present law levels of revenue and expenditures
- The Montana economic outlook presented by the Bureau of Business and Economic Research of the University of Montana
- An update on highway funding
- An update on student loan availability and other MHESAC topics
- A review of various LFC committee bills (listed below)
- A report on wildfire fire costs
- An update on the Montana State Hospital
- A discussion of the fiscal implications of an EPA audit on public water supplies
- A report on the status of pension funds
- Information technology update
- A presentation on the budget of the Montana State Fund
- The K-12 facility condition assessment executive report

The meeting will also include updates on a variety of subcommittee and work group topics:

- Performance measurements—work group reports on selected programs
- Study of budget and appropriations process
- Subcommittee on long-term stability of the general fund
- State Fund/workers' compensation subcommittee
- Study of LFD products and services
- Long-range planning study

Committee bills slated for discussion and action include the following:

- LC0065--Eliminate certain general fund transfers
- LC0066--Revise or eliminate certain statutory appropriations
- LC0103--Land board approval for abandoned mine and reclamation program land transactions
- LC0144--Revise law for acquisition of state office space
- LC0146--State Rainy Day Fund
- LC0147--Study student loan system
- LC0268--Increase limit on budget change documents
- LC0269--Generally revise appropriation and budget statutes

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- LC0270--Revise revenue streams to oil, gas, and coal natural resource account
- LC0271--Revise appropriations for aerospace and technology projects
- LC0272--Repeal bonding authority for aerospace projects
- LC0273--Amend definition of enterprise funds
- Revise statute regarding spending non-general fund money first

## WATER POLICY COMMITTEE

Committee recommends changes to state water laws...The Water Policy Interim Committee is recommending several changes to state law, including a measure that would make the committee a permanent interim fixture.

The WPIC was created in 2007 and was charged with studying a wide range of water issues in order to guide Montana's water policy toward ensuring fair and reasonable use of the state's water as demands on water increase and supplies remain the same or decrease. The WPIC was authorized and funded for one interim.

At its final meeting in September, the panel requested the following committee bills:

- providing funding for a statewide hydrogeologic study that would establish baseline data to be used in making water use decisions;
- changing the permitting process for issuing new water permits to make the process faster and easier to understand;
- requiring public water and sewer systems for subdivisions of 30 or more lots with an average lot size of three acres or smaller;
- requiring that mitigation and aquifer recharge plans obtain a water quality discharge permit, if necessary;
- allowing the Department of Transportation to apply for a certificate of water right to comply with the federal Clean Water Act; and
- protecting senior water right holders with the timely enforcement of illegal water use and the resolution of water disputes.

Water policy committee may become permanent...The WPIC and the Environmental Quality Council both endorsed a bill that would create a separate water policy interim committee, but would not alter the EQC agency oversight or water policy duties.

The WPIC debated, but did not support, a bill requested by the EQC that would create a standing water policy subcommittee of the EQC.

The WPIC also reviewed the study "Economic Analysis of Irrigated Agriculture." The Department of Natural

Resources and Conservation hired a contractor to conduct the study.

All committee information is available online at [www.leg.mt.gov/water](http://www.leg.mt.gov/water)

## LEGISLATIVE AUDIT COMMITTEE

Audit committee plans November meeting...The Legislative Audit Committee will meet Nov. 6 and 7 in Room 172 of the state Capitol. An agenda is not yet available, but audit reports that may be presented include:

Financial-Compliance Audits:

- Board of Public Education
- Department of Corrections
- Department of Environmental Quality
- Department of Justice
- Department of Military Affairs
- Department of Natural Resources and Conservation
- Department of Public Service Regulation
- Department of Revenue
- Judicial Branch
- Montana Historical Society
- Montana School for the Deaf and Blind
- Office of the Governor and Lieutenant Governor
- Office of the Secretary of State
- Office of the State Public Defender
- State Auditor's Office

For more information about the Legislative Audit Committee, contact Tori Hunthausen, legislative auditor, at (406) 444-3595 or [thunthausen@mt.gov](mailto:thunthausen@mt.gov).

## ECONOMIC AFFAIRS COMMITTEE

Intent and reality on wagering on fantasy sports leagues...Rule review at interim committees is rarely controversial, but when rules do not seem to comport with legislative intent, that generates attention. At its Sept. 12 meeting the Economic Affairs Interim Committee heard concerns about implementation of the Board of Horseracing's rules for fantasy sports gambling. The committee also reviewed legislation proposed by five state agencies and approved a committee bill proposing a legislative health policy council.

Staff attorney Bart Campbell reviewed the history of HB 616, introduced by Rep. Bill McChesney in 2007. As enacted, the bill authorized wagering on fantasy sports leagues under the auspices of the Board of Horseracing and provided that a portion of the wagers go to a special revenue account to be used to help horseracing survive in Montana. Campbell questioned the board's decision to let the Montana Lottery Commission handle the licensing and activities of the fantasy sports league instead of a private sector entity, as indicated by HB 616. Representatives of the Board of

Horseracing told the committee that the rules did not specify the lottery commission but that the lottery commission provided the only workable approach at this stage for handling the fantasy sports league, which it has agreed to do through an intra-agency agreement. Board attorney Sherri Meador said the board had acted quickly on the rules to be able to handle football fantasy sports betting as of September. The committee voted to request a legislative audit of the Board of Horseracing's implementation of the fantasy sports legislation.

Committee submits bill draft requests for state agencies...The committee initiated bill draft requests for the legislative proposals submitted by state agencies over which the committee has monitoring responsibility. The following agencies presented proposals: the State Auditor's Office and the Departments of Agriculture, Commerce, Labor and Industry, and Livestock.

Health council proposed....After hearing from members of a work group of the Montana Health Care Forum, the committee agreed to adopt their concept for a legislative Health Policy Council. The proposal will be drafted as a committee bill. The proposal calls for a 10-member legislative body that would work with stakeholders and other concerned citizens to develop policies on affordable, quality health care. The council would ensure continuity in health care policy analysis and would provide education for legislators. The council's proposed tasks include, among other things, consumer engagement, expansion of health insurance coverage, improved access and delivery of health care, better value for the money paid for health care following national standards, and improved, transparent information on health care to help consumers determine costs and quality. Sen. Ken Hansen will carry the bill.

Follow-up reports...Wrapping up their final meeting, members heard reports from the committee's liaisons with the Montana State Fund and the Rail Services Competition Council. Committee staff discussed the final reports for the following studies: business infrastructure and economic development (HJR 28); academic research and commercialization (HJR 39); health care financing reform (HJR 48); and expansion of value-added food production in Montana (SJR 13).

Bart Campbell reported on a work group's evaluation of concerns about residential construction. David Cook from the Building Codes Bureau at the Department of Labor and Industry said his office is working to develop consumer information that could be provided with electrical permits as one way of furnishing "buyer beware" information to people who are contracting for construction of a home.

Gone but not forgotten...Information about the committee is posted on its website. For questions about this meeting or previous meetings, check the website or contact Pat Murdo, committee staff, at (406) 444-3064.

## STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

The State Administration and Veterans' Affairs Committee met Sept. 15, to complete its work for the interim, including the HJR 46 study of election laws and the HJR 59 study of public employee retirement systems.

Mail ballot pilot project and other election law changes recommended...The committee has completed the study of election laws and recommends to the 60th Legislature the adoption of LC 60, a bill draft that would put a mail ballot pilot project into place for all elections held in selected counties in 2009 and 2010.

LC 60 stemmed from the HJR 46 study that called for a comprehensive cleanup and clarification of election laws, including the possibility of expanding the use of mail ballot elections. The committee decided early in the interim to pursue a pilot project that expanded mail ballot elections on a limited basis. Seventeen counties indicated their interest in taking part in the pilot project, and the committee approved including all of them in the bill draft. The participating counties will be required to report detailed information about the elections, information that can be used to assess changes and differences in voting between and among counties participating in the pilot project and counties that aren't. The committee also agreed that the state should seek similar information from non-participating counties, for purposes of comparison.

During the pilot project, participating counties will hold mail ballot elections for the elections conducted by the county election administrator. Because one purpose of the pilot project is to assess the benefits and drawbacks of mail-ballot-only elections, the participating counties will not open regular polling places. However, there will be locations open for collecting the ballots and for visually impaired voters who use AutoMark equipment to vote. The pilot project will include federal and state elections held during the time period--state law currently prohibits holding those elections by mail--and after conclusion of the pilot project, the law terminates.

The 17 counties included in the bill draft are: Big Horn, Blaine, Carbon, Carter, Gallatin, Jefferson, Lake, Lewis and Clark, Missoula, Phillips, Pondera, Ravalli, Richland, Rosebud, Sanders, Sweet Grass, and Yellowstone.

The committee also recommends adoption of four other election law bill drafts:

- LC 35: general cleanup and clarification of election laws;
- LC 36: allow youth ages 16 and 17 to serve as election judges;
- LC 59: clarify the handling of absentee ballots if a candidate dies and the ballots have been mailed or voted; and

- LC 106: give county election administrators the discretion to determine when to use accessible voting machines in mail ballot elections.

HJR 59 study of retirement systems...The long-running legislative study of public employee retirement systems concluded for this interim with the committee directing staff to prepare a handbook on Montana's public employee retirement systems as requested by HJR 59. Although the committee examined various aspects of public employee retirement, it did not recommend statutory changes as a result of the study.

The committee did, however, adopt a list of recommendations for the State Administration standing committees to consider and for the SAVA committee to study next interim:

- The Legislature should adhere to four principles of Montana's public employee retirement systems:
  - Pensions should provide the base of financial security in retirement.
  - Pension funding should be a contemporary obligation.
  - Pension investments should be governed by the Prudent Expert Rule.
  - Pension benefits should be equitably allocated among beneficiaries.
- The interim committee should work with the Office of Budget and Program Planning to have draft fiscal notes prepared for draft, retirement-related legislation that is to be considered and acted upon by the committee. In this context, "acted upon" means the committee would make a recommendation on the proposed legislation to the next Legislature.
- The interim committee should have sufficient financial resources to obtain professional actuarial support, either through professional staffing or through contracted services.
- The interim committee should contract for post-audits on the estimated and actual actuarial and fiscal effects of significant, retirement-related legislation adopted by previous legislatures.
- The interim committee should establish an early date by which retirement-related legislative proposals must be submitted for consideration by the committee pursuant to 5-5-228(2), MCA.
- The interim committee should establish a work schedule and request sufficient resources to fully comply with 5-5-228, MCA. The schedule will likely require the committee to focus solely on retirement system-related issues in the latter half of the interim

and to extend the date by which the committee must complete its interim work on retirement-related legislative proposals.

- The interim committee should ensure that a handbook on public employee retirement systems be drafted primarily for the benefit of legislators and maintained to reflect changes: to the retirement systems resulting from changes in state or federal law (including the Internal Revenue Code); in the actuarial assumptions adopted by the retirement boards; in the financial condition of the systems; in the broad and localized economies; in the demographics of the state's labor force and labor pool; and in other factors that may affect public employee retirement systems.

The handbook on the state's public employee retirement systems will be drafted and made available for distribution to members of the 60th Legislature and others.

Montana Administrative Procedures Act...In an ongoing examination of the statutory requirements for agency administrative rules to include a statement of "reasonable necessity for the proposed action" (2-4-302, MCA), the committee requested legislation to affirm the Legislature's purpose and policy regarding such statements (LC 18) and to clarify the conditions under which such a statement may be revised (LC 201). LC 18 results from a Montana Supreme Court decision that held, among other things, that certain provisions of MAPA are procedural only (rather than substantive). LC 201 results from an agency's action of revising a statement of reasonable necessity after the comment period for a proposed administrative rule had expired. LC 150 clarifies an agency's duties to notify the sponsor of the bill for which administrative rules are promulgated and to require, in some cases, an agency to provide a written response regarding the sponsor's comments on the proposed administrative rules.

For more information about the committee, contact Dave Bohyer, committee staff, at [dbohyer@mt.gov](mailto:dbohyer@mt.gov) or (406) 444-3064, or Rep. Franke Wilmer, the committee's presiding officer, at (406) 599-3639.

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Special districts bills advance...The Education and Local Government Interim Committee has recommended that two bill drafts on special purpose districts be considered by the Legislature. The proposals grew out of the work of the HB 49 subcommittee, which studied whether a single set of statutes could be established to govern Montana's many special districts. The goal is to improve efficiency and reduce confusion and disparity within current law.

The subcommittee decided not to put all special districts under one governing process at this time. But the subcommittee has identified 15 special districts for which consolidation is appropriate. LC 370 is the bill draft that would accomplish that.

LC 371 would change two areas of law affecting all special districts. The first change would allow local governments to sell up to \$1 million in bonds through private negotiated sale with local banks. The subcommittee says that this would save on administrative costs and put more of the money raised by the bonds directly toward the special district improvements they fund. The second change would require special districts, when created or their boundaries are altered, to provide legal descriptions and boundary maps of the districts to the state for purposes of digital mapping and inclusion in the geographic information system. This information can be accessed by the public online.

More information about the subcommittee's work and copies of the bill drafts can be found on the committee's website at [www.leg.mt.gov/elgic](http://www.leg.mt.gov/elgic) by clicking on the HB 49 Special Purpose Districts link under "Subcommittees". For more information about the subcommittee, contact Hope Stockwell, subcommittee staff, at [hstockwell@mt.gov](mailto:hstockwell@mt.gov) or (406) 444-1640.

Subcommittee meetings...The K-12 Subcommittee, PEPB Subcommittee, K-12 / PEPB joint subcommittee, and HB 49 subcommittee met Sept. 4 to finish work on bill drafts for consideration by the Education and Local Government Committee. The full committee approved the following bill drafts:

- revise and clarify obsolete local government laws (LC 369);
- Montana scholarship program (LC number pending)
- revise laws governing special districts (LC 370)
- revise local government laws pertaining to special districts (LC 371)
- approve the Bitterroot Valley Community College (LC 154)
- study community college establishment process (LC 151)

- clarify legislative approval of a community college (LC 153)
- incentives for dentists (LC 152)
- K-12 performance reporting (LC number pending)
- higher education performance reporting (LC number pending)
- study option for improving administrative efficiencies in school system (LC 439)
- create a local government interim committee (LC 438)

Agency legislative proposals...The committee reviewed legislation proposed by the Montana Library Commission and the Office of Public Instruction. The committee requested bill drafts for one MLC proposal and six OPI proposals.

Agency rules...The committee reviewed two sets of administrative rules proposed by the Office of Public Instruction. One deals with technology and library media, and the other with distance learning and Class 8 licensure. The committee had earlier requested the Legislative Fiscal Division to assess the fiscal impact of the proposed rules.

Other topics...The committee heard an update on the court filing by the Montana Quality Education Coalition as well as a preview of an education conference scheduled for Saturday, Jan. 10, 2009. The committee is sponsoring this event, which will be held at the Great Northern Hotel in Helena.

## ENVIRONMENTAL QUALITY COUNCIL

The Environmental Quality Council wrapped up the interim, agreeing to bring a series of climate change bills before the 2009 Legislature and approving several final reports.

Climate change bills move forward...After reviewing public comments collected during the month of August, and accepting additional testimony, the EQC agreed to move forward nine pieces of climate-change related draft legislation to the 2009 Legislature for review. Those bill drafts include:

- (LC 390) Increase coal severance tax funding for the Montana Manufacturing Extension Center (through the coal severance tax) and request additional funds be used to promote and develop recycling technologies. Eliminate the sunset on coal severance tax funding for the Growth through Agriculture program and Montana Cooperative Development Centers.

- (LC 389) Create a loan program to assist private entities and political subdivisions of the state, including local and tribal governments, in developing recycling technologies and equipment at local landfills.
- (LC 388) Eliminate sunsets on tax incentives for recycling. These include the recycled materials tax deduction (sunsets Dec. 31, 2011), the credit against air permitting fees for certain uses of post-consumer glass (sunsets Dec. 31, 2009), and the tax credit for investments in property or equipment used to collect or process reclaimable materials. (sunsets Dec. 31, 2011)
- (LC 387) Require the Department of Transportation to report to the Revenue and Transportation Interim Committee on measures that the department is taking to conserve energy in the transportation sector and conservation measures specific to city street design each interim. This report would track efforts over and above current levels of activity.
- (LC 386) Update and remove any restrictive statutes related to mass transit. Increase funding to the senior and disabled transportation account.
- (LC 385) Provide additional funding for weatherization programs by using a percentage of the increased oil and gas production taxes.
- (LC 384) Expand tax credits (similar to those proposed in Senate Bill 210 during the 2007 legislative session) to create incentives for low-income property owners and landlords or renters, or both, to weatherize.
- (LC 383) Require the EQC to study biomass and provide specific policy direction on expanding the Alternative Energy Revolving Loan program; making better use of the Renewable Resource Grant program; promoting pilot projects, source reduction, emissions research and characterization; and a variety of tax incentives.
- (LC 382) Require newly constructed and leased state buildings to exceed current building codes or standards.

Members approved a report "Climate Change: An analysis of climate change policy issues in Montana."

Food production tax incentives run aground...The EQC spent a great deal of time discussing ways to promote the production of local food and fiber. Last July, the council reviewed a report on the efforts of the Economic Affairs Interim Committee concerning SJR 13, a study of methods and recommendations to add value to Montana agricultural products through redevelopment of a food processing

industry. The EQC also reviewed draft legislation to provide tax incentives to encourage the use of Montana raw materials for production of food in Montana. Because of the uncertain constitutionality of the incentives, the EQC decided not to make a recommendation.

Conservation easement study report approved...The EQC completed its HJR 57 study of conservation easements and management of state trust lands. The EQC approved the report "Trust Land Management: An analysis of conservation easements and other uses of state trust lands."

In general, the study found that the Land Board has several legal options when it comes to state trust land and conservation methods. The report does not recommend any legislation, but includes a brochure that explains the basic elements of conservation easements.

Two options for water policy future...The EQC approved two bill drafts to bring before the 2009 Legislature concerning water-related responsibilities.

The first draft, which was approved by the joint EQC/Water Policy subcommittee and considered by the EQC, would create a separate water policy interim committee while maintaining the EQC's statutory oversight of the Department of Natural Resources and Conservation, the Department of Fish Wildlife, and Parks, and the Department of Environmental Quality.

A second bill draft would create a permanent water policy subcommittee of the EQC.

EQC members agreed to send both bill drafts to the full Legislature to allow the two concepts to be further discussed.

The Water Policy Interim Committee, created by the 2007 Legislature as a one-interim committee, voted to request the separate water policy committee bill draft.

Wrap up of petro-fund study...The EQC approved the report "Petroleum Take Release Fund: An analysis of issues surrounding the solvency of the fund."

The Petroleum Tank Release Fund subcommittee (a joint panel of the EQC and the Legislative Finance Committee formed to study the insolvency of the fund) submitted the report to the EQC. The subcommittee did not make any legislative recommendations, saying such proposals are beyond its current directive.

The Department of Environmental Quality, however, has proposed an agency bill that would amend statutes governing the Petroleum Tank Release Compensation Fund.

For more information about the EQC, contact Todd Everts at [teverts@mt.gov](mailto:teverts@mt.gov) or (406) 444-3747, Joe Kolman, [jkolman@mt.gov](mailto:jkolman@mt.gov), (406) 444-9280, Sonja Nowakowski, [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or (406) 444.3078, or Hope Stockwell at [hstockwell@mt.gov](mailto:hstockwell@mt.gov) or (406) 444-1640. The EQC website is <http://leg.mt.gov/eqc>.

## ENERGY AND TELECOMMUNICATIONS COMMITTEE

Committee holds forum on oil production... Why are gas prices at the pump so high? What role does Montana play in meeting the world's demand for oil, and what do high prices mean for Montana households?

The Energy and Telecommunications Interim Committee hosted a public policy discussion Sept. 4 in an effort to answer these questions and learn more about the growing energy needs of consumers and industry. During the two-plus hour panel discussion, the ETIC discussed oil production, pipeline infrastructure, oil production taxes, price differentials, consumer interests, and the economic importance of oil production.

Presentations were packed with information, which is all available on the ETIC website. A few highlights from the presentations include:

- Over the last two years, with increasing oil prices, oil production has become the second leading industry in Montana, surpassing tourism.
- In fiscal year 2008, oil and natural gas production tax collections were \$324.3 million, representing about 68 percent of all natural resource production taxes collected by the state.
- Montana oil production peaked in 2006 with about 36 million barrels of oil produced.
- Over 50 percent of the 2006 oil production was from the Bakken Formation in the Elm Coulee Field.
- Statewide production has declined at a rate of about 6 percent a year since mid-2006.

The oil pricing and production panel included: John Felmy, chief economist, American Petroleum Institute; Tom Richmond, administrator, Montana Board of Oil and Gas Conservation; Beth Claude, manager, state and government affairs, Enbridge Pipelines Inc.; Terry Johnson, principal fiscal analyst, Legislative Fiscal Division; Eric Dale, associate revenue analyst, Office of Budget and Program Planning; Bob Decker, executive director, The Policy Institute; Scott Rickard, director, Center for Applied Economic Research, Montana State University--Billings; and Pat Barkey, director, Bureau of Business and Economic Research, University of Montana -- Missoula.

Committee action... In addition to discussing the oil and gas industry, the ETIC finalized its studies of carbon sequestration and public power. The committee completed and approved two reports: "Perspectives on Public Power: A review of the public power model, its history, and its potential in Montana" and "Carbon Sequestration Study: An analysis of geological and terrestrial carbon sequestration regulatory and policy issues."

The committee voted 5 to 1 not to recommend a

study of geological carbon sequestration.

The committee approved draft legislation that eliminates the pending sunset of the electric Universal Systems Benefits (USB) program. In 1997 SB 390 established the USB charge for all electric distribution utilities at 2.4 percent of 1995 electric utility revenues to begin January 1, 1999. The electric USB currently in law expires Dec. 31, 2009. The committee approved draft legislation that removes the sunset, and adds language to existing statutes requiring the ETIC, each interim, to review the USB program.

Meeting materials and additional information on the ETIC and its studies can be found at: <http://leg.mt.gov/etic>. For more information contact Sonja Nowakowski at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or at 444-3078.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Two down, one to go... The Children, Families, Health, and Human Services Interim Committee concluded work on two studies in August by approving 10 committee bills and two letters to state agencies. The action came in studies involving emergency medical services and the health care delivery system.

The committee will finish up a third study on mental health at a special meeting Oct. 14.

SJR 5 study results in proposed EMS incentives... The committee reviewed and approved revised versions of six bill drafts involving emergency medical services in Montana. The most significant change involved the definition of volunteer emergency medical technician. All of the committee bills seek to strengthen Montana's EMS system by providing incentives to volunteer EMTs, their employers, and the agencies that use volunteers.

The initial bill drafts used monetary guidelines set in Montana's so-called "Good Samaritan" law to determine which EMTs would qualify for tax incentives. The new definition, developed based on public comment received in June, focuses on the degree to which an EMT provides emergency care on an unpaid or minimally paid basis. The revision allows some people who work full time as EMTs to be considered volunteers if they also provide uncompensated care for their own or another agency.

The committee approved the following revised bill drafts:

- LC 333, creating a special license plate for volunteer EMTs and providing a tax credit for purchase of the license plate;
- LC 334, allowing reduced staffing levels for certain ambulance transports including some inter-facility transports;
- LC 335, adding a volunteer EMT to the Board of Medical Examiners;

- LC 336, providing tax incentives for volunteer EMTs and to employers who give their employees time off to answer calls in their capacity as volunteer EMTs;
- LC 337, creating a \$1 million grant program for EMS providers; and
- LC 117, providing confidentiality protection for review of EMS calls when the reviews are done for purposes of quality control.

In addition, committee members approved letters that have been sent to the Department of Public Health and Human Services (DPHHS) and the Department of Labor asking the agencies to follow up on recommendations made in a June performance audit of the EMS system. The letters ask that the agencies report back to the committee next interim on progress made on the audit recommendations.

The committee approved the drafting of a seventh bill, based on legislative audit recommendations. LC 338 will clarify medical direction issues and the handling of EMS and EMT complaints.

SJR 15 study: three is better than one...The committee canceled a bill request that had incorporated three elements related to health care providers' potential conflicts of interest and replace the one bill with three, each dealing with separate elements:

- LC341, removing a termination date from statutes regulating the economic credentialing of physicians by hospitals and revising the statutes;
- LC 342, expanding the federal antikickback statutes to cover all health care providers regardless of payor (federal statutes apply to payments under federal programs like Medicare); and
- LC 343, requiring health care providers who make referrals to disclose if they have ownership or employment interests at the entity to which they make referrals.

In other actions related to the SJR 15 study of health care access and delivery, the committee agreed to introduce a "cat and dog" bill for a health information technology demonstration project. Its first preference, the committee said, was for the governor to include in the executive budget \$1.5 million in one-time funding for the demonstration project. The committee also received information on how Montana's major hospitals handle patients' delays in paying bills and chose not to act on bill drafts to either extend a moratorium on specialty hospitals or revise regulations on them. Congress continues to look at limits on future hospitals that typically focus on cardiac, surgery, orthopedic, or other high-cost treatments.

A preliminary look at mental health findings...DMA Health Strategies, the firm hired to conduct a study of Montana's publicly funded mental health system, provided an

overview of some of its early findings and potential recommendations. Dick Dougherty said some areas of concern about the state's system include the lack of capacity for patients in crisis, a need for more inpatient beds, and the stringent income and illness criteria for receiving state-funded services.

DMA will present its final report on Oct. 14, and a draft should be available for public review in early October. The draft will be posted on the committee's web site at [www.leg.mt.gov/cfhhs](http://www.leg.mt.gov/cfhhs).

Also at the August meeting, committee members heard about the wrap-around philosophy of providing services to children with serious mental health needs who may also need services from more than one agency. This philosophy focuses on meeting the needs of the child and the family by building on the families' strengths and including the families as partners in treatment decisions.

The committee also heard a discussion about youth who are receiving mental health services out of state and the efforts that state agencies and in-state providers are making to find ways to bring those children back to Montana, when appropriate.

DPHHS update...Department of Public Health and Human Services Director Joan Miles discussed agency activities, including changes in the Food Stamp program to increase the number of people eligible to receive benefits. The committee had voted in June to encourage DPHHS to change its eligibility guidelines. Miles said DPHHS will expand eligibility requirements by excluding some resources that have been counted as income and by changing the income levels for eligibility; the changes will go into effect Oct. 1.

Miles also noted that the department's efforts to reduce the number of patients at the Montana State Hospital has been successful, with the census falling at or below the licensed level of 189 patients for the last several months. The department has made arrangements with community providers to accept some State Hospital patients and provide intensive services. Before the department contracted for these services, the State Hospital population was consistently above 200 patients a day.

Lou Thompson of the Addictive and Mental Disorders Division reported on a number of mental health initiatives funded by the 2007 Legislature, including:

- the 72-hour presumptive eligibility program for crisis services, which had served 741 people since going into effect on March 1. The agency has been unable to hire additional psychiatrists at the State Hospital to provide the telepsychiatry services envisioned in the program.
- the hiring of five community liaisons in three communities to provide support services for people who have been discharged from the State Hospital. The liaisons were hired in Helena, Missoula, and Butte.
- new drop-in centers around the state, with the fifth

and final center to be operating by Sept. 1--a "virtual center" that is a phone and Internet-based service operated by the Montana Mental Health Association.

Suicide prevention efforts underway...Karl Rosston, suicide prevention coordinator for DPHHS, provided a required report on the suicide prevention plan developed under SB 478. This 2007 bill created a \$400,000 suicide prevention program that included funding for an around-the-clock suicide prevention hotline, hiring of a suicide prevention coordinator, and the development of a suicide prevention plan. The plan sets specific goals, including preventing at least 26 suicides a year by 2013, putting an evidence-based suicide prevention curriculum into 40 percent of Montana's high schools by 2013, and increasing public education and awareness efforts by 2009 through advertisements, broad publication of the suicide hotline phone number, and programs targeted to specific risk groups.

Fingerprint background checks for direct-care workers...Committee members heard an update on a joint DPHHS-Department of Justice study required by SJR 7 to look at how to put in place criminal fingerprint background checks for direct-care workers. Jeff Buska, administrator of the DPHHS Quality Assurance Division, said a work group came up with a list of crimes that would permanently or temporarily disqualify a person from working as a direct-care worker. The group also suggested creation of a secure registry of all direct-care worker applicants so employers could see if a background check had already been conducted on an applicant. The work group determined that both the state and employers should share the costs of conducting the background checks. The work group did not develop legislation, but did conclude that the Legislature should take steps to put a public policy on background checks into place.

Cervical Cancer Task Force report focuses on HPV vaccine...Elizabeth Lelacheur reported on the work the Cervical Cancer Task Force did during the interim to review the new human papillomavirus (HPV) vaccine. The task force was set to expire in 2007, but the Legislature extended it for a two-year period specifically to study the effectiveness of the new vaccine and ways to educate the public about the vaccine. The task force recommended that the state purchase 3,960 doses of the vaccine, using dedicated funding, and make them available to uninsured or underinsured young women between the ages of 19 and 26. The task force also worked on educational materials for use by parents, school personnel, and health care providers.

Coming up...The committee will meet Oct. 14 to complete work on the study of the state's publicly funded mental health system. The committee will hear final findings and recommendations from DMA Health Strategies, along with a response from DPHHS. The committee also will take public comment before deciding whether to proceed with any legislation or other action related to the study results.

The draft final report will be posted on the committee's website in early October.

Stay tuned...Actions taken at the August meeting are detailed on the committee's website at [www.leg.mt.us/cfhhs](http://www.leg.mt.us/cfhhs). Information about the October meeting will be posted to the website as it becomes available. Please contact Sue O'Connell at (406) 444-3597 or [soconnell@mt.gov](mailto:soconnell@mt.gov) for more information about committee activities.

## LAW AND JUSTICE COMMITTEE

Concluding an interim that focused on the study of mental health and the adult and juvenile justice systems, the Law and Justice Interim Committee has recommended seven committee bills for consideration by the 60th Legislature. The committee developed a package of three stand-alone bills dealing with crisis prevention procedures on involuntary commitment. Rep. Ron Stoker will carry all three bills.

Crisis intervention and jail diversion... Under the first proposal, the committee has recommended the establishment of a grant program to reimburse counties for up to 50 percent of county expenditures for crisis intervention, jail diversion, and participation in an involuntary precommitment cost insurance pool. The proposal is aimed at assisting counties to develop the services necessary to divert mentally ill persons from initially entering the justice system.

Emergency detention pending involuntary commitment...The second proposal would direct the Department of Public Health and Human Services to contract for up to three beds in each mental health service area for emergency detention and evaluation pending a commitment hearing. The proposal is aimed at developing local capacity for detention and evaluation after an involuntary commitment petition has been filed. This local capacity would help reduce the number of admissions to the Montana State Hospital pending a commitment hearing. These types of admissions now account for 63 percent of all MSH admissions.

Diversion from involuntary commitment...The third proposal would provide an alternative to involuntary commitment by allowing for the suspension of an involuntary commitment hearing if the respondent agrees to 14 days of short-term inpatient treatment. The proposal would direct the DPHHS to contract for up to three short-term inpatient treatment beds in each mental health service area. The proposal is designed to offer an alternative to what many testified was a cumbersome, expensive, all-or-nothing, and adversarial judicial process that was many times not in the best interest of respondents. It would allow respondents to receive treatment without the stigma of involuntary commitment.

Jail suicide prevention pilot program...To help reduce the high suicide rate in Montana's jails (more than 3 suicides annually statewide, which, per capita, is among the highest jail suicide rate in the nation), the committee has recommended the creation of a jail suicide prevention pilot project. Under the proposal, the DPHHS would contract with a mental health provider to offer selected counties a video or telephonic help line so that a mental health professional can employ a standardized suicide screening tool and initiate appropriate follow-up protocols. The project would be modeled after the Kentucky Jail Mental Health Crisis Network, which has achieved national recognition for a dramatic 80 percent reduction in its jail suicide rate. Rep. Bob Ebinger, if re-elected, will carry the bill.

Juvenile detention...The committee has recommend amending 41-4-333, MCA, to require that at a probable cause hearing to determine whether a youth should be placed in detention, the youth must be represented by an attorney, unless that right is waived after consultation with an attorney (LC 198). Sen. Carol Juneau will carry this bill.

Judicial salaries...A salary survey found that Montana's salaries for Supreme Court justices and District Court judges are the lowest in the nation. As a result, the committee has recommended a proposal to revise how Montana's judicial salaries are set. Judicial salaries are determined by a salary survey conducted in even-numbered years for salaries in effect prior to the start of the next fiscal year. The survey includes North Dakota, South Dakota, Wyoming, Idaho, and Montana. Under the proposal, Montana would not be included in the survey average. In order to eliminate the lag in implementing salary adjustments, the survey would be conducted annually and include salaries that would be in effect for the coming fiscal year. The pay increase would be effective for that same fiscal year. Sen. Jim Shockley will carry this bill.

Housekeeping bills...The committee has also recommended recommend two "clean-up" bills. LC 199 would add the 22nd Judicial District to the list of all judicial districts to be represented on the Judicial Nomination Commission. LC 299 would remove obsolete federal funding language in drug court statutes.

Additional work needed for mental health evaluation and treatment for youth...Although the committee worked hard to develop legislation to clarify how youth with a mental illness were evaluated and placed under the Youth Court Act, it decided not to recommend legislative action in this area. The committee determined additional work was needed before advancing a proposal. In particular, the committee wanted to develop a better definition for an "appropriate professional" to conduct mental health evaluations, refine the definition of a "mental disorder" to include psychological, developmental, and brain injury disorders; and to clarify the prohibition against the placement of a youth in a correctional facility (which includes a detention center) for a mental health evaluation. The

Department of Corrections has requested legislation in this area.

No recommendation made for youth mental health treatment facility...In July, the committee expressed its desire for justice-involved youth with a mental illness to be kept in-state for treatment. However, the committee did not recommend a state-operated or state-contracted residential treatment center for these youth. In October, the DPHHS will issue a Request for Information to determine provider interest in treating these youth in-state.

The committee's final report, which should be completed by late October, will be posted to the committee's website at [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic). For more information about the Law and Justice Interim Committee, please contact Sheri Heffelfinger at (406) 444-3596.

## LEGISLATIVE COUNCIL

Council meets in September...The Legislative Council met in September to consider a variety of topics related to the 2009 session. It also completed a statutorily-required consultation on a land transfer for the Great Plains Dinosaur Museum. The council has informed the Land Board of the consultation, and the Land Board can proceed with its deliberation on the project.

Bill draft requests...The Legislative Council approved some previous committee bill draft requests: the code commissioner bill, a code clean-up bill, and a bill to revise the timing for legislative budget submission. At the meeting, the council requested a number of additional committee bill drafts including bills to:

- revise the sponsor's fiscal note process;
- clarify return to employment for public officers;
- repeal reference to the Legislative Administrative Committee (which is proposed to be repealed in recommendations to the Joint Rules Committee);
- set the state employee meal reimbursement rate at 72 percent of the minimum federal rate and the reimbursement for nonreceiptable lodging at 50 percent of the federal rate; and
- provide legislators with a \$200 month allowance for constituent services during the months when the Legislature is not in regular or special session.

The Council also submitted additional bill draft requests on behalf of the Office of Budget and Program Planning.

2011 biennium budgets approved...The council approved proposed budget requests submitted for the

operations of the Legislative Services Division and for interim committee activities for the 2011 biennium. As part of the interim committees budget, the council approved a request from the State Administration and Veterans' Affairs Interim Committee for \$50,000 for contracted actuarial services to analyze retirement proposals submitted prior to the 2011 session.

It also approved the Computer System Planning Council plan and budget, which includes a \$5 million appropriation to replace and improve code changes and production, bill drafting, engrossing, enrolling, committee minutes, journal, and, possibly, bill status systems. These changes are necessary because of declining or obsolete systems and because of potential retirements of the most experienced staff who operate and support these systems.

Expanded TVMT coverage...The council approved a budget proposal to expand TVMT coverage to all communities in which there is a cable provider during the 2009 session and the following interim. There are 49 communities statewide and over 230,000 households that will be able to receive TVMT's coverage of legislative and other statewide proceedings through their cable providers, including Bresnan Communications, 3-Rivers Communications, and Mid-Rivers Communications, Inc.. In addition, Montana PBS will be able to provide the programming in Bozeman and Missoula.

Council recommends changes to rules...The council will refer proposed changes to the joint, House, and Senate rules to the rules committees this fall. Leadership will appoint the rules committees after the Nov. 12 caucuses. The rules committees are expected to meet Dec. 15. The council hopes that the respective rules committees will consider the council's recommendations in requesting bill drafts for each set of rules. A council rules subcommittee worked during the interim to clarify, refine, and update the rules.

Recommendations for changes to Senate Standing Committees...Senate Rule 30-20 requires the Legislative Council to review the workload of senate standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The council's recommendations will be submitted to the leadership nominated or elected at the November caucuses. The council has recommended separate Senate Natural Resources and Senate Energy standing committees (similar to 2005). It also has recommended making the Agriculture Committee a class 3 committee (class 3 committees meet twice a week) and the Local Government Committee a class 2 committee (class 2 committees meet three times a week).

Other session activities...Several organizations have discussed with the council their ideas on additional education opportunities for legislators and legislative interns. Legislative staff has been busy developing databases and processes to streamline the computer and phone setup for House and Senate offices. The setup has been dubbed the

"turnkey operation" and will provide leadership and House and Senate staff a more efficient way to document room assignments and to have immediate access to phones, computers, faxes, and printers after caucus.

Miscellaneous...The council will work on guidelines for a proposed Senate memorial on the third floor of the Capitol.

Justice Nelson has recently resigned from the National Conference of Commissioners on Uniform State Laws. The council will be soliciting interest in this appointment through the State Bar Association, the State Judges' Association, and the University of Montana Law School. If you are interested in receiving more information, contact Greg Petesch at (406) 444-3064.

Next meeting Nov. 18...The council is scheduled to meet Nov. 18 in Helena. It plans on presenting information on the legislative budget, the feed bill, and transition materials to assist the newly-elected leadership. Meeting materials will be posted two weeks before the meeting. For more information, contact Susan Byorth Fox at (406) 444-3066 or sfox@mt.gov.

## REVENUE AND TRANSPORTATION COMMITTEE

Committee rejects revising link to federal income tax law, approves recodification of individual income tax law...Under HJR 61, the Revenue and Transportation Interim Committee has been studying Montana conformity with federal income tax law. At its July meeting, the committee reviewed a bill draft that would change how Montana is linked to federal tax law. The draft would have tied Montana individual and corporate tax provisions to the Internal Revenue Code in effect on Dec. 31, 2008. The bill would also have provided for the incorporation of changes in federal tax law for a two-year period (e.g., January 1, 2009, through December 31, 2010). Future legislatures would have to take affirmative action to change these dates.

In addition to giving the Legislature more control of its tax policy, the bill draft dealt with a concern that Montana may be unconstitutionally delegating tax policy to the federal government. At its Sept. 10 meeting, representatives of the Montana Taxpayers Association and the Montana Society of Certified Public Accountants questioned whether there is an unlawful delegation of authority. They also feared that the change would increase the complexity of complying with Montana's tax system. The committee voted to table the proposal.

A little noticed provision in the HJR 61 study resolution directed the committee to consider whether reorganizing certain provisions of Montana's income tax laws would provide for more transparency in the compliance with and the administration of the state's income tax laws. The committee approved a bill draft (LC 413) to recodify Montana's individual income tax law. This bill draft doesn't

contain any policy changes, but merely reorganizes existing provisions. In particular, Title 15, chapter 30, part 1, would be separated into two new parts: "Part 21--Rate and Return of Tax" and Part 23--Specific Tax Credits and Tax Checkoffs". Sections 15-30-141 through 15-30-149, MCA, which cover administrative matters, would be moved to what is the existing part 3 on "Administration and Collection". Other parts of the individual income tax code will be unchanged except for renumbering.

Committee's revenue estimate may take on new significance...One of the committee's more important duties is to develop revenue estimates for each legislative session. Under current law, the committee's estimate is the official estimate until amended or finally adopted by the Legislature.

Over the last couple of sessions the revenue estimating resolution (HJR 2) has languished in the legislative process. Based on a recommendation from the Legislative Finance Committee to improve the budget process, the RTIC requested a bill draft that would revise the effect of its revenue estimate. Under the proposal, the committee's estimate would constitute the Legislature's official revenue estimate until the resolution, with or without changes, is finally adopted by the Legislature. The committee also decided that the resolution should start in the Senate. The committee unanimously approved the proposal (LC 219).

Other committee action...The committee approved

bill drafts to clarify existing law:

- standardize statutes related to tax increment financing districts (LC 410);
- clarify the nontaxable amount of gross value of product under the metal mines tax (LC 411); and
- clarify the distribution of certain motor vehicle revenue (LC 412)

The committee also endorsed a study bill that would examine the long-term effects of Montana's changing demographics on state and local revenues and expenditures. The proposal was developed by a joint subcommittee of the Revenue and Transportation Committee and the Legislative Finance Committee.

No rest for the weary...The committee is scheduled to meet Nov. 17 and 18 and Dec. 1 and 2. The committee will work on the revenue estimates and consider what action, if any, to take on mitigating the effects of periodic reappraisal of residential and commercial property and agricultural and forest lands.

Want to be in the loop?...The agendas and other material for the November and December meetings will be posted on the committee's website. For more information, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

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## THE BACK PAGE

### CAN YOU TRUST THE ECONOMISTS? A LAY PERSON'S VIEW OF THE FINANCIAL CRISIS

By Pat Murdo, Legislative Research Analyst  
Montana Legislative Services Division

*Author's Note: Having worked around economists for years, I've observed that, depending on the economist, they have a theory that pretty much covers every angle. Some basic concepts are akin to common sense, by which I mean that supply and demand in its basic application makes sense, as does the notion that there must be balance in current account payments, which equates with the huge U.S. trade deficit being offset by financial inflows from other countries.*

*However, in light of the current financial crisis of immense proportions, I would like to make some observations from a noneconomist's viewpoint about my suspicions that at least some economic theories have not kept up with the times. So take the following layman's observations and comments about the current financial crisis and notes on policy responses with a grain of salt and maybe a margarita.*

#### FIRST, THE BOTTOM LINE

The following local impacts already have resulted from the financial and mortgage lending crisis:

- When Congress in late July responded to nationwide mortgage defaults (and a few related financial institution failures) by enacting the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, it required states to set up a system of mortgage broker and mortgage lender testing and licensing by July 2010. If they do not, the Department of Housing and Urban Development will require use of a federal system and preempt state law. The Montana Commissioner of Banking and Financial Institutions has asked for a bill draft to amend Montana's relatively new mortgage lender and broker statutes<sup>1</sup> to incorporate the federal requirements and allow Montana to continue enforcing the system. Depending on how the Montana Legislature responds to the bill draft, the change in federal law will affect 239 mortgage brokers licensed in Montana as of July 30 and the 16 or more applicants for mortgage lender licensing.
- A second congressional response to the mortgage crisis was to provide more favorable tax treatment (related to the alternative minimum tax) on the purchase of tax-exempt bonds. This provision allowed the Montana Board of Housing to issue \$30 million in new bonds at lower interest rates in

August. Prior to that the board had found that new bond sales would result in a board mortgage rate for low- and moderate-income borrowers that would be higher than at local banks. Bruce Brensdal, board administrator, said caution by the board and by home buyers has resulted in only a fraction of home loans being issued so far this year in comparison to the nearly \$200 million in loans made in 2007 to between 1,700 and 1,800 families.

- New home starts recorded for the first two quarters of 2008 by the Montana Building Industry Association were down 34 percent statewide, according to Dustin Stewart of MBIA. He noted that, while Montana's economy generally remains solid, people who move here from other states are having trouble selling their homes in those states. He also said that at a mid-September board meeting contractors voiced concerns about the slowdown in residential construction, which is falling to 2002 levels.
- The Board of Investments exposure in the Fannie Mae and Freddie Mac takeovers both directly and indirectly through index funds as of Sept. 5 was about \$1.3 million or about 1/2 of 1 percent of the Montana Domestic Equity Pool, according to an email from BOI Executive Director Carroll South.
- Smaller investment companies like D.A. Davidson, headquartered in Great Falls, have sought to reassure customers of their solid financial statements. In a Sept. 18 letter to clients, the Davidson Companies reported "virtually no long-term debt" and the ability to finance normal business activities with internal capital. The letter also noted that its equity to assets ratio and long-term debt to equity ratios are "among the most conservative" in the industry.<sup>2</sup>

The following problems, or potential opportunities, are expected to result:

- Montanans applying for credit will most likely have to prove to lenders that they are a low risk.
- Those who have unpaid credit card balances may see a hike in their credit card rates.
- As financial markets wobble, investors may turn increasingly to purchases of gold and other commodities that Montana has in relative abundance.
- There may be continued difficulties in getting low-

<sup>1</sup>A new mortgage lender licensing system enacted in 2007 goes into effect in Montana Oct. 1. The first licensing statutes for residential mortgage brokers and loan originators were enacted in 2003.

<sup>2</sup>Letter from Ian Davidson and William Johnstone, chairman and president/CEO, respectively, of D.A. Davidson to clients, Sept. 18, 2008.

interest student loans or consolidating student loans.

- Pensioners and others who receive dividends or capital gains income in the stock market may have cause for worry over at least the next two years, depending on how the bailouts being engineered in Washington and on Wall Street (and in foreign capitals) turn out.
- Some construction-related jobs may be in jeopardy, as evidenced by recent layoffs at Plum Creek.
- Even in the best of times, start-up businesses have difficulty in obtaining bank financing. Now, start-up businesses will have an even tougher time getting financing.
- Again, depending on how the federal bailout is structured, consumer confidence may worsen, which means lower retail sales, which in turn can result in more job losses and a higher unemployment rate.
- If Bank of America Chief Executive Officer Ken Lewis can be relied upon as a forecaster, the financial landscape will result in more mergers like the one B of A arranged with Merrill Lynch, leaving a few strong major banks at the top, decimated ranks of mid-level banks, and community banks relatively unaffected.
- Banking and Financial Institutions Commissioner Annie Goodwin has said that most of the 65 state-chartered banks have been careful in retaining assets to loans, which is good in terms of their balance sheets. However, part of the current financial crisis includes the tightened flow of credit among banks. Stagnation does no one any favors, because even pools of liquidity have to be used to retain health in the banking and finance world. A possible result is bank consolidation or closed branches, depending on banking activity and their costs of doing business (as in paying higher premiums for insurance).
- Lending institutions participating in the Federal Deposit Insurance Corp., which insures up to \$100,000 of each depositor's account, are likely to face higher premiums to provide more support for the FDIC, which has had to payout for 11 federally-insured banks and thrifts that have failed in 2008. The FDIC has seen a 21 percent drop in the number of federally insured banks since 1998.<sup>3</sup>

Those projected, short-term impacts have some roots in economic theories, but the real questions related to the

current financial crisis involve longer-term effects. Even with the bailouts being proposed in Washington, the question remains: Do they have any idea what they're doing? Here's a series of related comments and questions.

### **TIMES HAVE CHANGED**

When Adam Smith's book The Wealth of Nations was published (the same year that America declared its independence from Great Britain), a hedge was something you planted to keep your neighbor's sheep out of your yard (or your sheep in). Now, a hedge more likely describes hedging your bets in the financial markets. Insurance is a type of hedge. People pay to make sure that some sort of financial recovery is possible if their normal operations suffer a catastrophe.

- In terms of the current financial crisis: If American International Group, an international insurance firm, had not insured myriad businesses involved with mortgage-backed securities, its credit rating likely would not have been downgraded (which was the trigger that led to the U.S. government's decision to step in and extend \$85 billion in financing to save AIG from bankruptcy).
- In terms of state/federal policy: Insurance for the most part is regulated at the state level. The current financial crisis adds to existing questions about the appropriateness of disparate state, instead of uniform federal, regulation of insurance. If the current crisis leads to more federal regulation of the insurance industry, that could affect insurance premium taxes paid in Montana, which in fiscal 2008 were about \$65.7 million.

### **IT'S A WHOLE NEW WORLD**

Some economic theories seem passe now that economies interact globally. While Adam Smith and other economists might contend that, regardless of circumstances, all people will act out of their own self-interest, what happens when governments differ in how they interfere with a person's self-interest? Or, in centrally-controlled economies, what happens if a person's self-interest requires staying on the good side of the government? Or if the government itself manipulates supply and demand? World markets are imperfect because governments exercise different types of controls. And with globalization the rest of us have to deal with that.

Smarter people than I have analyzed the significance of globalization on different economies. One point here is that any one government may have policies that undermine the collective, intertwined global financial system. In the 1990s that complex worldwide creditor/debtor relationship resulted in rescues and support by more financially sound economies when financial markets foundered in Russia, Brazil, Thailand, and South Korea, to name a few.

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<sup>3</sup>Marcy Gordon, Associated Press, "Federal bank insurance fund dwindling", *The Independent Record*, Sept. 17, 2008, p. 6A.

Another point to consider is that the proposed bailouts have much to do with reassuring foreign stock markets, which may or may not be beneficial to the U.S. taxpayer underwriting the bailouts. So some questions from a layman's perspective are: If we are our brother's keeper, are they ours? Does a country lose or gain moral authority in trying to rescue or bail out a business considered "too big to fail", especially if the failure hinders businesses worldwide?

A *New York Times* report in September suggested that through its rescue of AIG the U.S. government "not only has turned away from decades of rhetoric about the virtues of the free market and the dangers of government intervention, but it has also probably undercut future American efforts to promote such policies abroad".<sup>4</sup>

- In terms of the current financial crisis: Massachusetts Rep. Barney Frank suggested that other countries should have contributed to the rescue of AIG. In essence, Frank appeared to be saying that America has helped them, they should help a U.S. firm with holdings in their countries. Whether he's right or wrong, the comment highlights how America's economy has changed and raises questions about what happens when a truly international firm runs into financial trouble.
- In terms of state/federal policy: Beyond the idea of whether it is appropriate to use U.S. money to bail out firms either here or abroad, what is the responsibility of the U.S. government to protect bond holders at the expense of shareholders, particularly when the bonds are held internationally? The U.S. government's concern about foreign bond holders was one reason given for the speed with which the federal government moved to rescue mortgage banking giants Fannie Mae and Freddie Mac, which both had government backing and operated as quasi-governmental entities. The government action supported bond holders, while shareholders lost their investment.

## ECONOMIC FRILTIES

Among the reasons given for America's current financial crisis have been: excessive leverage, greed, and following the market.<sup>5</sup> In response to one television talk show host's question about whether greed in the financial world today is more prevalent than in the past, Maurice "Hank" Greenberg, one of the founders of AIG who involuntarily stepped down

in 2005, said he did not think so.<sup>6</sup> But perhaps Greenberg is too close to the question.

From a more distant perspective, America's manufacturing sector in the late 1980s and into the 1990s came under fire as chief executives who might have moved up the ladder in the company were replaced with executives whose skills stemmed more from their MBAs and experience in leveraged buyouts. Observers back then said that chief executives focused more on making money than on building companies with new or better products. One of the differences between some of the big financial firms then versus now, is that loyalty to a firm from an executive who founded the firm or came from the ranks of the employees has been replaced by short-term incentives to boost shareholder value. (Short-term incentives have long existed, but typically a corporate builder is less likely to risk a legacy than someone who shoots for a high score and moves on.)

An opposite perspective is that those not in the executive's chair have a golden incentive to some day run a major company and earn as much money as the board of directors is willing to pay.

In layman's terms, self-interest works in the short run for the CEO but not necessarily in the long run for the company or its shareholders. Beyond that is loyalty between company executives and employees, which may be a thing of the past for many companies. Undermining loyalty at some companies may be the disparity between CEO and average worker pay. The Economic Policy Institute in 2006 reported that the average CEO in 2005 earned "more before lunchtime on the very first day of work in the year than a minimum wage worker earns all year".<sup>7</sup> Overall, between 1992 and 2005 CEO pay increased 186.2 percent and median workers' pay rose 7.2 percent, the institute reported.<sup>8</sup>

- In terms of the current financial crisis: *The New York Times* reported that financial companies worldwide had claimed more than \$500 billion in charges and losses related to the credit crisis.<sup>9</sup> Was that all just funny money achieved by leveraging nonexistent funds for overvalued deals? Or did someone profit in the equivalent of a giant Ponzi scheme?

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<sup>6</sup>Interview with Charlie Rose on PBS Television, Sept. 17, 2008.

<sup>7</sup>Lawrence, Mishel, "CEO pay-to-minimum wage ratio soars", Snapshot, June 27, 2006. See at: [http://www.epi.org/content.cfm/webfeatures\\_snapshots\\_20060627](http://www.epi.org/content.cfm/webfeatures_snapshots_20060627)

<sup>8</sup>The Economic Policy Institute, "The State of Working America", 2006/2007 edition. See at: [http://www.stateofworkingamerica.org/intro\\_exec.html](http://www.stateofworkingamerica.org/intro_exec.html)

<sup>9</sup>Ben White and Eric Dash, "As Fears Grow, Wall St. Titans See Shares Fall", *The New York Times*, published Sept. 17, and on-line Sept. 18, 2008. See at: <http://www.nytimes.com>.

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<sup>4</sup>Nelson D. Schwartz, "Abroad, Bailout is Seen as a Free Market Detour", *The New York Times*, published Sept. 17, 2008. On line Sept. 18, 2008. See at: <http://www.nytimes.com>.

<sup>5</sup>Comments by Ken Lewis, chief executive officer of Bank of America, in CNBC interview, Sept. 16, 2008, after Bank of America arranged to acquire Merrill Lynch and prevent its bankruptcy. Others have cited similar reasons.

- In terms of state/federal policy: As of 2007, companies that file with the Securities and Exchange Commission must report CEO total compensation along with a justification for the pay package. A bill introduced in Congress in 2007 to implement a British-style law allowing shareholders to have more say on executive pay passed the House but has not been acted on by the Senate. The White House urged time to see if the SEC rules prove effective.<sup>10</sup>

### IMPERFECT INFORMATION

The speed with which the current financial crisis hit Wall Street and Washington regulators has been blamed, in part, on a lack of information by which to forecast how much at peril the high-flying financial institutions were. The "efficient market theory" suggests that "prices reflect all available information" so that asset prices are best left alone in a well-functioning market. Problems arise when information is withheld or not made available to the appropriate decision makers. Then, if central banks like the Federal Reserve step in, they may prevent recessions or collapses in the short term but at the risk of "moral hazard"--the concern that by stepping in to prevent a severe crisis the government encourages bad behavior with the implied promise of a rescue.<sup>11</sup>

An example of imperfect information is that in the current financial crisis little knowledge exists about hedge funds and derivatives, such as credit-default swaps (CDSs). Some people would say lack of regulation is good and that buyers ought to beware. Others would like a handle on hedge funds and CDSs, which make up an apparently significant segment of the financial industry. *The Economist* put the CDSs held by Fannie Mae and Freddie Mac at \$500 billion, linked to those agencies' \$1.5 trillion in bonds, but the magazine added that the value is "unknown, as CDSs are private".<sup>12</sup> For players without information, the stock market is more like a huge gamble.

- In terms of the current financial crisis: *The Economist* reports that auctions to close out the swaps will take place in October and that if all works

well, the International Swaps and Derivatives Association (who knew that existed!) will benefit from increased credibility. The magazine also noted that "the value of swaps far exceeds the face value of those bonds".<sup>13</sup>

- In terms of state/federal policy: Calls for regulation have come from both presidential candidates. This could range from requiring more information or extending control to activities that as of now are unregulated. Front-end regulation is one option. Another is back-end restrictions on investing public dollars, through pension funds or other activities, in gambling-like ventures.

### SOMETHING FOR NOTHING

Classical economists might say that the market was working to cull out bad actors when certain lenders and homeowners ran into trouble over subprime mortgages.<sup>14</sup> But classical markets were not allowed to operate and one question is whether they ever will. In March the Federal Reserve intervened to encourage the rescue of Bear Stearns by JP Morgan Chase. An earlier hiccup occurred in late 2007 when the largest American bank in terms of assets, Citibank, needed financial assistance, which was offered by a United Arab Emirates governmental arm in Abu Dhabi. Congress took action in July to help support lenders and certain homeowners as well as to further regulate mortgage lenders.

The ripple effects from defaults and foreclosures led to the September financial crisis in which Lehman Brothers was allowed to fail, Merrill Lynch was taken over by Bank of America for a "low" \$50 billion, and the Federal Reserve essentially took control of AIG to prevent that firm's bankruptcy. All this started with a housing boom and Americans' use of low-interest mortgages to refinance homes or take out home loans by borrowing against what apparently were inflated housing values.

### A SECOND BOTTOM LINE

For the majority of people, there is no such thing as something for nothing, and most economists probably would agree with that.

<sup>10</sup>Bill Moyers Journal, "Payday for CEOs", June 8, 2007. See at: <http://www.pbs.org/moyers/journal/06082007/profile.html>

<sup>11</sup>More on this is in a book review "Credit and blame" in the Sept. 13 *The Economist*, p. 79, reviewing George Cooper's *The Origin of Financial Crises: Central Banks, Credit Bubbles, and the Efficient Market Fallacy*, published by Harriman House.

<sup>12</sup>"Quite an event", *The Economist*, Sept. 13, 2008, p. 78.

<sup>13</sup>*Ibid.*

<sup>14</sup>Subprime mortgages are those made when lenders allowed people either to use low down payments or adjustable rate mortgages (ARMs) to borrow more money than they otherwise might qualify for. When the interest rates on the ARMs spiked or when for other reasons people could not make mortgage payments and their homes went into foreclosure, their lenders suffered along with the home buyers.



# INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
October 2008						
			1	2	3	4
5	6	7	8 Legislative Finance Committee Budget and Appropriation subcommittee, Room 102, 1 p.m.  LFC State Fund/ workers' comp. sub- committee, Room 152, 5 p.m.	9 LFC performance measurement work groups, rooms TBA, 8 a.m.  Legislative Finance Committee, Room, Room 102, 1 p.m.	10 Legislative Finance Committee, Room, Room 102, 8 a.m.	11
12	13	14 Children, Families, Health, and Human Services, Room 137	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
November 2008						1
2	3	4	5	6 Legislative Audit Committee, Room 172	7 Legislative Audit Committee, Room 172	8
9	10	11	12 Legislative cau- cuses  Orientation and training for new and veteran legislators	13 Orientation and training for new and veteran legislators	14 Orientation and training for new and veteran legislators	15
16	17 Revenue and Transportation Committee	18 Revenue and Transportation Committee  Legislative Finance Committee, Room 102, 8 a.m.  Legislative Council	19	20	21	22
23	24	25	26	27	28	29
30						

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